



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Moody Bros./Troika, Int'l Inc./C.G. Willis  
Inc.--Claim for Costs

**File:** B-237278.3

**Date:** December 22, 1989

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### DIGEST

There is no basis for an award of quote preparation and protest costs where the protest was dismissed as academic, since a prerequisite to the award of costs is a decision on the merits of a protest.

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### DECISION

Moody Bros./Troika, Int'l/C.G. Willis, Inc. request recovery of their quote preparation and protest costs as a result of the cancellation of the Military Traffic Management Command rate tender solicitation "Barge-TK-02," for the shipment of sea sheds from Perryville, Maryland to Port Hueneme, California. We deny the claim for costs.

On June 5, 1989, the agency mailed letters requesting rate tenders (quotes), and five quotes were received by the August 29 closing date. Moody Bros., Troika, Int'l and C.G. Willis protested the agency's determination that Troika was not a carrier eligible to submit a tender and that Moody did not have appropriate Interstate Commerce Commission operating authority for the entire movement as required by the solicitation. The agency subsequently canceled the solicitation. The agency reports that, due to an urgent need to ship 70 sheds, it used an alternate procurement procedure to meet this need. The protesters were solicited for the urgent shipments. As a result, the total quantity to be shipped under the protested solicitation was reduced 40 percent. The agency anticipates further shipments under this alternate procedure for all its remaining requirements for which the protesters will be solicited. On November 27, we dismissed the protest because cancellation of the solicitation rendered the protest academic.

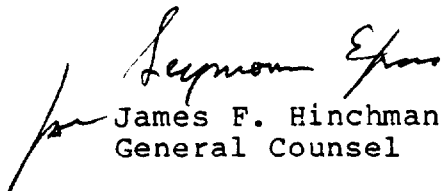
The protesters argue without challenging the agency grounds for cancellation that they were the low bidder and entitled

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to award under the canceled solicitation, and therefore are entitled to quote preparation and protest costs.

Our authority to allow recovery of the costs claimed by the protesters is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. IV 1986); Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213. A decision on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs. Soltec Corp.--Request for Costs, B-234716.3, June 8, 1989, 89-1 CPD ¶ 539. Here, despite the protesters' allegation that they were entitled to award, we did not make such a determination; therefore, we have no basis for awarding costs to the protesters.

The request for costs is denied.

  
for James F. Hinchman  
General Counsel